

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
DOCKET NO. 5:15-CV-00097-BO**

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his Official Capacity as Sheriff of Wake County, North Carolina, PAT McCRORY, in his Official Capacity as Governor of North Carolina, ROY COOPER, in his Official Capacity as Attorney General of North Carolina, and FRANK L. PERRY, in his Official Capacity as Secretary of the North Carolina Department of Public Safety,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANT DONNIE HARRISON’S
MOTION TO DISMISS**

This action is a constitutional challenge to North Carolina’s regulatory scheme for concealed carry permits. The complaint alleges Plaintiff is a lawful permanent resident alien who, beginning in July 2015, will not be permitted to carry a concealed handgun under a North Carolina statute prohibiting local sheriffs from issuing concealed carry permits to non-U.S. citizens. Plaintiff has sued various State officials and has also sued Defendant Donnie Harrison (“Sheriff Harrison”), one of the 100 local sheriffs charged with enforcing the North Carolina statute.

The Court will recall there is a virtually identical lawsuit pending before it against Sheriff Brindell B. Wilkins of Granville County (“Sheriff Wilkins”), which is captioned *Veasey v. Wilkins*, No. 5:14-cv-00369-BO (hereinafter “the Granville County Case”).¹ Counsel for Plaintiff in the instant case is Local Rule 83.1 Counsel for the Plaintiff in the Granville County

¹ Although the instant case naturally involves a different plaintiff and slightly different background facts from those of the Granville County case, these facts have no bearing on the instant motion.

Case. The undersigned represents Sheriff Wilkins in the Granville County Case. The cases have not been formally consolidated, but the Court has noticed a hearing on the preliminary injunction motion in the instant case for April 16, 2015 at 2:00 p.m., the same date and time as an amended motion for preliminary injunction is to be heard in the Granville County Case. [DE 10]; [No. 5:14-cv-00369-BO at DE 42].

In the Granville County Case, Sheriff Wilkins moved to dismiss the complaint on the grounds that Section 1983 does not permit a plaintiff to challenge the constitutionality of a State statute by suing one of the 100 local sheriffs who are required to enforce it. [No. 5:14-cv-00369-BO at DE 15 (pp. 4-8) and DE 25 (pp. 1-6)]. As Sheriff Wilkins explained, the Fourth Circuit and other Circuits have made clear that a local government official cannot be held liable under Section 1983 for merely enforcing State law because this does not constitute a “policy or custom” of the local government under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). [No. 5:14-cv-00369-BO at DE 15 (pp. 4-8) and DE 25 (pp. 1-6)] (citing *Bockes v. Fields*, 999 F.2d 788, 791 (4th Cir. 1993)). This issue was fully briefed and argued by the parties and remains pending before the Court. [No. 5:14-cv-00369-BO at DE 32].

The constitutional challenges to North Carolina’s concealed carry permit laws in both the Granville County Case and the instant case are identical. So too are the applicable defenses for Sheriff Wilkins and Sheriff Harrison.

Accordingly, in the interest of conserving the Court’s time and resources, Sheriff Harrison relies on and incorporates by reference the legal arguments set forth in the memoranda filed by the undersigned on behalf of Sheriff Wilkins in the Granville County Case. These arguments, which rely on the Fourth Circuit’s decision in *Bockes v. Fields*, 999 F.2d 788, appear

at DE 15 (pp.4-8) and DE 25 (pp. 1-6) in *Veasey v. Wilkins*, No. 5:14-cv-00369-BO.² Excerpted portions of the memoranda containing these arguments are also attached hereto for the convenience of the Court. *See* Exhibits A-B.

For those reasons, Sheriff Harrison is entitled to a dismissal of this action against him.

Respectfully submitted the 1st day of April, 2015.

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SHERIFF DONNIE HARRISON**

² In the Granville County Case, Sheriff Wilkins initially made additional arguments concerning Plaintiffs' failure to join necessary parties and failure to comply with statutory notice requirements, which were rendered moot when the Plaintiffs in the Granville County Case later named various state officials as defendants. Those arguments do not apply here because Plaintiff in the instant case has sued various State officials in addition to Sheriff Harrison.

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record as follows:

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This the 1st day of April, 2015.

s/ Andrew H. Erteschik
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